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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 02-365
FM Broadcast Station.)	RM-10451
(Laramie, Wyoming and Timnath, Colorado))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 2, 2003

Released: April 4, 2003

Before the Chief, Allocations Branch:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice"),¹ in this proceeding, issued in response to a petition filed on behalf of Laramie Mountain Broadcasting, L.L.C., licensee of Station KIMX, Laramie, Wyoming, proposing the substitution of Channel 288C2 for Channel 288C3 at Laramie,² the reallocation of Channel 288C2 to Timnath, Colorado, as that community's first local aural transmission service, and modification of its authorization accordingly. Petitioner filed supporting comments in response to the Notice reaffirming its intention to apply for Channel 288C2 if it is allotted to Timnath, Colorado, as requested. No other comments were received. For the reasons discussed below, we are granting the Petitioner's request.

2. As stated in the *Notice*, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's **Rules** which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ The requested allotment of Channel 288C2 to Timnath, Colorado, an incorporated community, is mutually exclusive with its existing authorization at Laramie, Wyoming. The distance between the two communities is 47.4 kilometers (29.4 miles), whereas the Commission Rules require a minimum separation of 190 kilometers (118 miles) between Class C2 co-channel allotments.

¹ *Laramie, Wyoming and Timnath, Colorado*, 17 FCC Rcd 24336 (2002) (M.B. 2002).

² Prior to the submission of its rule making request, petitioner filed a one-step application (File No. BPH-20001128ABB) to specify operation on Channel 288C2 at Laramie. The application was granted on February 12, 2001.

³ See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

3. Additionally, the *Notice* announced our preliminary finding that the proposed reallocation would result in a preferential arrangement of allotments, consistent with the Commission's **allotment** priorities.⁴ Timnath, Colorado (population 223),⁵ will receive its first local transmission service (priority three) and Laramie (population 17,104) will not be left without local broadcast service (priority four). Petitioner claims that adoption of the proposal will result in a preferential arrangement of allotments consistent with the Commission's allotment priorities.⁶

4. Petitioner advised that it intends to relocate the transmitter site of Station **KIMX**, thereby creating signal gain and loss to areas and populations if Channel 288C2 is reallocated from Laramie, Wyoming, to Timnath, Colorado. The *Notice* set forth the projected gain and loss study reflecting that the reallocation proposal will enable the petitioner to provide a new gain of service of 244,334 people and an area gain of 3,717 square kilometers. The projected loss area is served by five or more stations and is considered to be well-served.⁷

5. Laramie, Wyoming, is not in an urbanized area. However, Timnath is located within the Fort Collins Urbanized Area. In such instances, the proponent is required to demonstrate that the intended city of license is independent of the central city to justify a first local service preference.⁸ Petitioner provided a *Tuck* analysis demonstrating that Timnath is sufficiently autonomous of Fort Collins and merits its own first local service.⁹ Timnath is an incorporated community that has its own local government, post office, zip code, churches, businesses, restaurants, schools and volunteer fire department.

6. We believe the public interest would be served by reallocating Channel 288C2 from Laramie, Wyoming, to Timnath, Colorado, and modifying the authorization for Station **KIMX** accordingly. Our analysis is premised on the petitioner's showing that the reallocation of Channel 288C2 to Timnath, will result in a preferential arrangement of allotments. Timnath will be provided with its first local aural transmission service, and Laramie will not be left unserved or underserved.

7. Channel 288C2 may be allotted to Timnath in conformity with the minimum distance separation requirements set forth in Section 73.207(b)(1) of the Commission's Rules, utilizing the petitioner's specified site located 21 kilometers (13 miles) north of the community at coordinates 34-15-09 NL; 83-28-28 WL.

⁴ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See, *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁵ Population figures were taken from the 2000 U.S. Census.

⁶ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).)

⁷ See *La Grange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). See also, *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm. November 29, 1983) [The Commission has considered five or more reception services to be "abundant".]

⁸ See *e.g.*, *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1995).

⁹ See *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.* ("KFRG"), 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck* ("Tuck"), 3 FCC Rcd 5374 (1988).

Additionally, as Timnath, Colorado, is located within the protected area of the Table Mountain Radio Receiving Zone ("Zone"), Boulder County, Colorado, petitioner must consult with the Department of Commerce prior to submission of its application to implement the change of community to specify Timnath, Colorado, regarding the need to protect the Table Mountain Radio Zone. *See* Section 73.1030(b) (2) of the Commission's Rules.¹⁰

X. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (e) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 19, 2003**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Timnath, Colorado	288C2
Laramie, Wyoming	236C, 244C2, 254A, 275C, 283C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Laramie Mountain Broadcasting, L.L.C. for Station KIMX(FM), Channel 288C2, IS MODIFIED to specify operation on Channel 288C2 at Timnath, Colorado, in lieu of Laramie, Wyoming, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Laramie Mountain Broadcasters, L.L.C., 6807 Foxglove Drive, Cheyenne, WY 82009.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(i), any party seeking a change in community of license of a television or FM allotment or an upgrade of an existing FM allotment, if the

¹⁰ Petitioner has agreed to contact the Radio Frequency Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO, as required.

request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Laramie Mountain Broadcasting, L.L.C. is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license at Timnath, Colorado.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning the above, contact Nancy Joyner, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Mass Media Bureau